

H

LEONARD, STREET AND DEINARD

PROFESSIONAL ASSOCIATION

August 22, 2000

David R. Crosby
612-335-1627
david.crosby@leonard.com

Via Messenger

Frederick K. Grittner
Supreme Court Administrator
Supreme Court
305 Minnesota Judicial Center
25 Constitution Avenue
St. Paul, MN 55155-6102

OFFICE OF
APPELLATE COURTS
AUG 22 2000

FILED

C3-00-1454

Re: **Motion to Consolidate**
Daniel Gordon v. Microsoft Corporation
Civil No. 00-5994
and
Philip A. Mednick v. Microsoft Corporation
Civil No. CO-00-1276

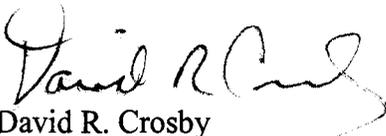
Dear Mr. Grittner:

Enclosed for filing with the Minnesota Supreme Court please find the original and four copies of the following documents:

1. Microsoft Corporation's Reply Memorandum in Support of its Motion to Transfer and Consolidate Related Cases; and
2. Supplemental Affidavit of David R. Crosby in Support of Motion by Microsoft Corporation to Transfer and Consolidate Related Cases.

Respectfully submitted,

LEONARD, STREET AND DEINARD

By 
David R. Crosby

DRC:map

Enclosures

cc: Richard M. Hagstrom, Esq. (w/o enc.)
Vincent J. Esades, Esq. (w/o enc.)
James B. Hovland, Esq. (w/o enc.)

ORIGINAL

STATE OF MINNESOTA
IN SUPREME COURT

C3-00-1454

DANIEL GORDON, Individually and
On Behalf of All Others Similarly
Situating,

Plaintiff,

v.

MICROSOFT CORPORATION, and
DOES 1 through 100, inclusive,

Defendants.

)
) Hennepin County District Court
) Fourth Judicial District
)

) Civil No. 00-5994
) The Honorable Bruce A. Peterson
)

PHILIP A. MEDNICK, an individual,
on behalf of himself and all others
similarly situated,

Plaintiff,

v.

MICROSOFT CORPORATION,
a Washington corporation,

Defendant.

)
) Ramsey County District Court
) Second Judicial District
)

) Civil No. CO-00-1276
) The Honorable Dale B. Lindman
)

**MIRCOSFT CORPORATION'S REPLY MEMORANDUM
IN SUPPORT OF ITS MOTION TO
TRANSFER AND CONSOLIDATE RELATED CASES.**

INTRODUCTION

Microsoft respectfully submits this Reply Memorandum in support of its motion for an order consolidating the above cases by transferring the *Mednick* action to Hennepin County District Court and assigning it to the Honorable Bruce A. Peterson (to whom the *Gordon* case is assigned). Plaintiff Mednick has failed to rebut Microsoft's showing that such action will further the interests of the parties and the judiciary by eliminating duplicative discovery, preventing inconsistent pretrial rulings, and conserving the resources of the parties, their counsel and the judiciary.

I. Plaintiff Mednick's Procedural Arguments Are Misplaced.

Plaintiff Mednick's principal ground for opposing consolidation is purely procedural, and demonstrably wrong: he argues that Microsoft's motion is improperly before the Court. Mednick is mistaken. Section 480.16 of the Minnesota Statutes permits the Chief Justice to issue an order granting the relief sought by Microsoft. The recent case of *In re: Minnesota Vitamin Antitrust Litigation*, 2000 WL 210213 (Minn. Feb. 17, 2000) establishes the correctness of the procedure used by Microsoft in its motion.¹

Mednick's assertion that the Court cannot transfer the *Mednick* action to Hennepin County District Court is also flawed. Section 542.11(4) of the Minnesota Statutes provides that the venue of a civil action may be changed when "the convenience of witnesses and the ends of justice would be promoted by the change." In addition, Section 2.724 of the Minnesota Statutes

¹ This procedure was confirmed prior to Microsoft filing its motion during a telephone call between Microsoft's counsel and Richard Slowes, Commissioner for the Minnesota Supreme Court. Supplemental Affidavit of David R. Crosby in Support of Motion ("Crosby Supp. Aff."), ¶ 2.

provides the Chief Justice broad powers to consolidate cases (such as those at issue here) to serve the ends of justice and conserve judicial resources:

When public convenience and necessity require it, the chief justice of the supreme court may assign any judge of any court to serve and discharge the duties of judge of any court in a judicial district not that judge's own at such times as the chief justice may determine.

Minn. Stat. § 2.724 (subd. 1); *see also* Minn. Stat. § 2.724 (subd. 4(c)) (chief justice is to supervise the administrative operations of all state courts). Past consolidation orders from this Court make clear that consolidation of cases pending in separate districts and assignment of those cases to a single judge is well within the chief justice's discretion.

See Minnesota Vitamin Antitrust Litig., 2000 WL 210213; *In re: Minnesota Silicone Implant Litig.*, 503 N.W.2d 472 (Minn. 1993); *see also Minnesota Personal Injury Asbestos Cases v. Keene Corp.*, 481 N.W.2d 24, 26 (Minn. 1992) (referencing administrative order that assigned one judge to preside over all asbestos-related claims brought in the Minnesota state courts).

II. The Substantial Similarities Between *Mednick* and *Gordon* (as well as the Similarities to the Other "Minnesota" Cases That Comprise Part of the MDL Proceeding) Strongly Favor Consolidation Before a Single District Court Judge.

Despite *Mednick*'s efforts to "distance" the allegations within his Complaint from those set forth both in the *Gordon* Complaint and in the four other complaints in related actions initially filed in Hennepin County District Court², the substantial similarities between and among these cases make it clear that consolidation is warranted. Regardless of whether these actions involve one Microsoft product (Windows 98) or several (such as Windows 95 and 98), all of

² These cases were subsequently removed and comprise a portion of the MDL Proceeding.

these cases involve common issues of (1) underlying acts of alleged monopolization, (2) other allegedly unlawful conduct, and (3) the distribution of Microsoft's software products.³

Specifically, both Mednick and Gordon allege that during the 1990's Microsoft's share of the market for Intel-based PCs exceeded 90%, a market share that both have alleged was "dominant." *Gordon* Complaint ¶ 35; *Mednick* Complaint ¶ 27. Both plaintiffs allege that there exists an "Application Barriers to Entry" that has allegedly protected Microsoft's alleged monopoly power in the operating-systems market throughout the 1990's. *Gordon* Complaint ¶¶ 36-45; *Mednick* Complaint ¶¶ 31-40. A principal focus of plaintiffs' proof in both cases undoubtedly will be on Microsoft's allegedly anticompetitive response to Netscape's Navigator browsing software and Sun Microsystems' Java technologies. *See Gordon* Complaint ¶¶ 48, 50; *Mednick* Complaint ¶¶ 41-48. Since the liability issues framed by the two complaints are in all material respects substantially similar, the interests of judicial economy and decisional consistency are best served by having the evidence on those issues presented once in a consolidated proceeding.

Mednick's speculation that (unspecified) discovery differences between the *Mednick* and *Gordon* cases provide a reason to have the plainly similar actions go forward in separate districts is unpersuasive. Because the liability allegations within these actions are very similar, there is every reason to believe that there will be substantial overlap in the discovery required as to those issues. More telling, however, is the fact that at a June 26, 2000 pretrial conference before Judge

³ This is true not only for the "Minnesota" cases, but for each of the more than 150 similar private, putative class actions that have been filed against Microsoft in state and federal courts nationwide during the past nine months.

Lindman, Mednick's counsel stated that they had no objection to the court following the discovery procedures and schedule established by Judge Motz within his Pretrial Order No. 1. Crosby Supp. Aff. ¶ 3. This Order provides that it "is desirable, to the maximum extent possible, to avoid duplication of discovery proceedings," and that counsel in the MDL Proceeding "shall take all reasonable and necessary steps to coordinate discovery and other proceedings as much as possible so that proceedings in related cases pending in state courts are coordinated as much as possible with proceedings in [the MDL Proceeding]." (Copy attached at Crosby Supp. Aff., Ex. A.) The fact that Mednick objected to the coordination of discovery and pretrial activities only after Microsoft filed its motion to this Court calls into serious question the motive behind—and the validity of—such protestations.

Failing to consolidate *Mednick* and *Gordon* would also set Minnesota apart from every other state supreme court across the country that has ruled upon similar consolidation requests. Indeed, similarities among related cases akin to those referenced above between *Mednick* and *Gordon* have not only been recognized as valid reasons for pretrial consolidation of the roughly 60 cases that comprise the MDL Proceeding, **but also by the highest courts of Michigan, Kansas, New Mexico, and the Superior Appellate Court of California.** See Crosby Supp. Aff. Ex. B. As established above, Mednick has set forth no compelling or unique reasons why this Court should stand alone on the issue of consolidation.

III. Mednick Has Advanced No Valid Argument for Contesting that the Consolidated Actions Be Presided Over by The Honorable Bruce A. Peterson in Hennepin County.

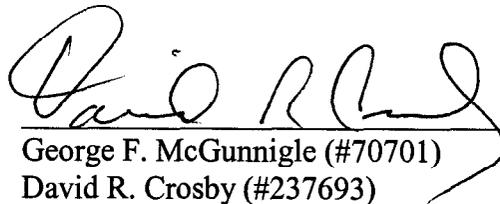
Most of Mednick's brief contends that consolidation—anywhere—is inappropriate. As explained above, those arguments should be rejected. There are simply no valid reasons why two different courts should both be devoting scarce judicial resources to two substantially identical,

and plainly complex, lawsuits. Consolidation is the only way to ensure consistency in the two lawsuits.

The only remaining issue is whether Hennepin County is an appropriate venue for the consolidated proceeding. It clearly is. Local co-counsel for all parties in *Gordon* and *Mednick* are located in downtown Minneapolis in Hennepin County. And in the event that any of the other related class actions that have been consolidated as part of the MDL Proceeding are remanded to Minnesota state district court, any such case would be remanded to Hennepin County, where each such case was initially filed.

Because Hennepin County is the most appropriate venue for the consolidated case, Judge Peterson (the Judge assigned to *Gordon*) is the logical choice to preside over the case, as he is familiar with the general allegations in all the related cases that have been brought against Microsoft. He has met with the parties to generally discuss the issues involved, reviewed relevant correspondence, and received and read Orders from the MDL Panel and Judge Motz.

Dated: August 22, 2000



George F. McGunnigle (#70701)
David R. Crosby (#237693)

LEONARD, STREET AND DEINARD
Professional Association
Suite 2300
150 South Fifth Street
Minneapolis, Minnesota 55402
Telephone: (612) 335-1500

and

David B. Tulchin
Michael Lacovara

SULLIVAN & CROMWELL
125 Broad Street
New York, New York 10004
(212) 558-4000

Counsel for Defendant Microsoft Corporation

OF COUNSEL:

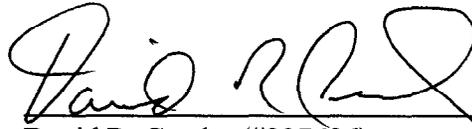
Thomas W. Burt
Richard Wallis
Steven J. Aeschbacher
MICROSOFT CORPORATION
One Microsoft Way
Redmond, Washington 98052
(425) 936-8080

Charles B. Casper
MONTGOMERY, McCracken, Walker & Rhoads, LLP
123 South Broad Street
Philadelphia, Pennsylvania 19109
(215) 772-1500

Steve W. Berman
HAGENS BERMAN LLP
1301 Fifth Avenue, Suite 2900
Seattle, Washington 98101
(206) 623-7292

ACKNOWLEDGMENT

Defendant Microsoft Corporation, by its attorney, David R. Crosby of Leonard, Street and Deinard, hereby acknowledges that, under certain circumstances, costs, disbursements and reasonable attorneys' and witness' fees may be awarded in this action pursuant to Section 549.211 of the Minnesota Statutes.



David R. Crosby (#237696)

Attorney for Defendant Microsoft Corporation

STATE OF MINNESOTA
IN SUPREME COURT

ORIGINAL

C 3-00-1454

)
DANIEL GORDON, Individually and)
On Behalf of All Others Similarly)
Situating,)
)
Plaintiff,)
)
v.)
)
MICROSOFT CORPORATION, and)
DOES 1 through 100, inclusive,)
)
Defendants.)
)

Hennepin County District Court
Fourth Judicial District

Civil No. 00-5994
The Honorable Bruce A. Peterson

)
PHILIP A. MEDNICK, an individual,)
on behalf of himself and all others)
similarly situated,)
)
Plaintiff,)
)
v.)
)
MICROSOFT CORPORATION,)
a Washington corporation,)
)
Defendant.)
)

Ramsey County District Court
Second Judicial District

Civil No. CO-00-1276
The Honorable Dale B. Lindman

**SUPPLEMENTAL AFFIDAVIT OF DAVID R. CROSBY IN SUPPORT OF
MOTION BY MICROSOFT CORPORATION TO
TRANSFER AND CONSOLIDATE RELATED CASES**

pending in those states before a single district court judge. The allegations in the consolidated actions are substantially similar to those in the *Mednick* and *Gordon* actions.

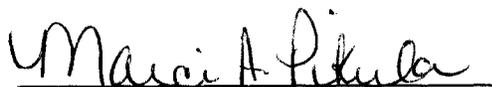
FURTHER AFFIANT SAITH NOT.

Dated: August 22, 2000.

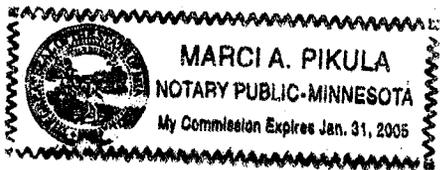


David R. Crosby

Subscribed and sworn to before me
this 22nd day of August, 2000.



Notary Public



UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

-----x
IN RE MICROSOFT CORP.
ANTITRUST LITIGATION

; MDL DOCKET NO. 1332
Hon. J. Frederick Motz

This Document Relates To:
All Actions
-----x

~~PROPOSED~~ PRETRIAL ORDER NO. 1

Having considered the proposed Pretrial Order No. 1, it is hereby ORDERED that:

CONSOLIDATION

1. The actions listed on Schedule A of the Transfer Order of the Judicial Panel on Multidistrict Litigation, dated April 25, 2000 ("Transfer Order"), and all actions subsequently transferred to this Court (collectively, "Tag-Along Actions") whether brought under federal antitrust law (hereinafter, "Sherman Act Cases") or following removal to this or another federal court and based on state law (hereinafter, "State Law Cases"), are, until further order, consolidated for pretrial proceedings (hereinafter, the "Consolidated Action"), pursuant to Federal Rule of Civil Procedure 42(a), except that the case of Gravity, Inc. v. Microsoft Corp., No. 99-CV-00363 shall be coordinated with the Consolidated Action as provided below.

MASTER DOCKET AND MASTER FILES

2. A Master Docket and a Master File are hereby established for the Consolidated Action. The clerk of the Court shall assign a docket number to this Consolidated Action. The clerk of the Court shall file all pleadings in the Master File and note such filings in the Master Docket.

3. All orders, pleadings, motions and other documents served or filed in the Consolidated Action shall have the following caption:

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

-----X	:	
IN RE MICROSOFT CORP.	:	
ANTITRUST LITIGATION	:	
	:	MDL DOCKET NO. 1332
	:	Hon. J. Frederick Motz
This Document Relates To:	:	
["All Actions" or specify by caption	:	
and/or case number the applicable	:	
case(s) if the document relates to	:	
less than all of the consolidated cases]	:	
-----X	:	

4. The original of this Order shall be filed by the clerk in the Master File. The clerk shall mail a copy of this Order to counsel of record in the Consolidated Action and a copy thereof shall be filed in each subsequently filed or transferred similar action which is related to and consolidated with this action.

5. Filings related to issues particular to the Gravity, Inc. action shall be docketed in a separate case file under the same caption except for the notation "This Document Relates To: Gravity, Inc. v. Microsoft Corp.." In all other respects, Gravity, Inc. shall join in all other coordinated submissions by plaintiffs in the Consolidated Action.

SUBSEQUENTLY FILED OR TRANSFERRED RELATED ACTIONS

6. Any Tag-Along Action will be reassigned to this Court and consolidated with the Consolidated Action.

7. Promptly upon learning of the filing in this Court, or transfer thereto, of any action arising from the same events as the subject matter of the Consolidated Action, Microsoft counsel shall provide written notice of same to the Court and to plaintiffs' Co-Chairs (as hereinafter defined). Upon five (5) business days of receipt of such notice, plaintiffs' Co-Chairs shall mail a copy of this Order to plaintiff's counsel in each such action and to counsel for any defendant who is not already a party to any action included in the Consolidated Action.

8. Counsel for any party to any such subsequently filed or transferred action, not already appearing, may object to the consolidation of such action by filing with the Court and serving upon plaintiffs' Co-Chairs and counsel for all defendants in such action a written objection and application for relief within fifteen (15) days of the service of this Order upon counsel of the objecting party.

COORDINATION OF DISCOVERY

9. It is desirable, to the maximum extent possible, to avoid duplication of discovery proceedings. To that end, counsel in this Consolidated Action shall take all reasonable and necessary steps to coordinate discovery and other proceedings as much as possible so that the proceedings in related cases pending in state courts are coordinated as much as possible with proceedings in this Consolidated Action. If a deposition is taken after October 31, 2000 in any of the related cases pending in any state court, any party to this Consolidated Action may serve a cross-notice of deposition in this Consolidated Action.

10. Counsel for the parties in the Consolidated Action and any coordinated actions shall confer and cooperate with each other as necessary to avoid cumulative or duplicative discovery and shall coordinate to the extent reasonably possible. The Plaintiffs' Lead Counsel, as identified below, shall act on behalf of all plaintiffs in initiating, conducting and coordinating discovery. Counsel in a coordinated case may initiate discovery as to issues unique to that case after consulting with Plaintiffs' Lead Counsel to attempt to coordinate such discovery with other discovery efforts.

11. Plaintiffs' Lead Counsel, as identified below, in this Consolidated Action shall seek to confer with counsel for the parties in the cases pending in state courts for the purposes of negotiating stipulations or agreements coordinating pretrial discovery so as to avoid cumulative or duplicative discovery to the extent reasonably possible. Plaintiffs' Lead Counsel, shall act on behalf of plaintiffs in the Consolidated Action in attempting to negotiate such stipulations or agreements.

ORGANIZATION OF PLAINTIFFS' COUNSEL

12. The Court hereby designates the following Lead Counsel to lead the efforts on behalf of all plaintiffs, as described further below:

Plaintiffs' Lead Counsel Committee

Stanley M. Chesley, Co-Chair
WAITE, SCHNEIDER, BAYLESS & CHESLEY CO., L.P.A.

Michael D. Hausfeld, Co-Chair
COHEN, MILSTEIN, HAUSFELD & TOLL, P.L.L.C.

Ben Barnow
BARNOW and GOLDBERG, P.C.

**Joseph P. Danis
CAREY & DANIS, L.L.C.**

**Robert L. Loeff
LIEFF, CABRASER, HEIMANN, & BERNSTEIN, L.L.P.**

**Christopher Lovell
LOVELL & STEWART**

**Alice McInerney
KIRBY, MCINERNEY & SQUIRE, L.L.P.**

**Leonard B. Simon
MILBERG, WEISS, BERSHAD, HYNES & LERACH, L.L.P.**

**Douglas G. Thompson
FINKELSTEIN, THOMPSON & LOUGHRAN**

By separate order, further counsel may, if appropriate, be later designated as additional members of the Lead Counsel Committee.

13. The Co-Chairs shall act as joint chairpersons of the Plaintiffs' Lead Counsel Committee and shall facilitate the orderly and efficient functioning of the Plaintiffs' Lead Counsel Committee and Executive Committee (as identified below) and the prosecution and litigation of plaintiffs' claims in the Consolidated Action. The Co-Chairs shall receive orders, notices, correspondence and telephone calls on behalf of all plaintiffs and transmit copies of the above to plaintiffs' counsel. The Plaintiffs' Lead Counsel shall, in consultation with the Executive Committee, have the responsibility on behalf of plaintiffs for: (a) determining the scope, order and conduct of all discovery proceedings; (b) making such work assignments to other plaintiffs' counsel as they may deem appropriate (c) creation of working committees and appointment of members thereto; and (d) the initiation, response, scheduling, briefing and argument of all motions. In the Consolidated Actions, Plaintiffs' Lead Counsel shall, in consultation with the Executive Committee, have the

responsibility on behalf of plaintiffs for (a) retention of experts; (b) conducting settlement negotiations; and (c) the prosecution in this Court of any claims on behalf of plaintiffs.

14. The Court hereby designates an Executive Committee consisting of the following:

Gordon Ball
LAW OFFICE OF GORDON BALL

Nicholas E. Chimicles
CHIMICLES & TIKELLIS, LLP

John J. Cummings III
CUMMINGS, CUMMINGS & DUDENHEFER

Dianne M. Nast
RODA & NAST

Linda P. Nussbaum
POMERANTZ, HAUDEK, BLOCK, GROSSMAN & GROSS, L.L.P.

Lynn L. Sarko
KELLER ROHRBACK, L.L.P.

Howard J. Sedran
LEVIN, FISHBEIN, SEDRAN & BERMAN

David D. Shelby
SHELBY & CARTEE

Robert A. Skimick
MEREDITH, COHEN, GREENFOGEL & SKIRNICK, P.C.

[Plaintiffs' Lead Counsel propose that one additional position on the Executive Committee be given to one attorney to be jointly selected by the law firms of Duane, Morris & Heckscher, Girard & Green, Kramon & Graham and Kronick, Moskowitz, Tiedemann & Girard. The Court will be advised at a later time concerning the attorney selected.]

By separate order, further counsel may, if appropriate, be later designated as additional members of the Executive Committee.

15. The Executive Committee shall be responsible for consulting with Plaintiffs' Lead Counsel on all litigation matters and the performance of such work assignments as designated by Plaintiffs' Lead Counsel.

16. Counsel in any Tag-Along Action that is or will be consolidated with the Consolidated Action shall be bound by this organizational structure.

APPEARANCES

17. All counsel who have filed their appearances in this action or who may hereafter file their appearances on behalf of any party to this action, and who are not members of this Court but are in good standing in the jurisdiction where they regularly practice law, are deemed admitted pro hac vice for purposes of this litigation.

PRESERVATION OF DOCUMENTS

18. The parties will preserve documents and evidence in accordance with Paragraph 4(d) of the Court's Order No. 1 dated May 3, 2000 regarding preservation of documents, subject to such further Order as may be entered by the Court.

DISCOVERY

19. Within 14 days after June 16, 2000 and entry by the Court of a protective order concerning confidential discovery materials, Microsoft shall produce to Plaintiffs' Lead Counsel all documents, as defined by Fed. R. Civ. P. 34(a)(1):

(a) produced by Microsoft in United States v. Microsoft Corp., No. 98-1232

(D.D.C., Jackson, J.) ("Microsoft II"), and all pleadings, exhibits and deposition and hearing transcripts filed or created in that action, except documents that were filed under seal or designated as Confidential or Highly Confidential by third parties under the applicable protective order. Microsoft will provide a list of all such documents filed under seal and will cooperate with plaintiffs in any application to the District Court of the District of Columbia in seeking to obtain access for plaintiffs to such documents. Microsoft will not assert objections to subpoenas of third parties for documents produced in Microsoft II or the case of United States v. Microsoft Corp., which resulted in entry of a consent decree in 1994 ("Microsoft I");

(b) produced by Microsoft in Caldera, Inc. v. Microsoft Corp., No. 2:96 CV 0645B (D. Utah), ("Caldera"), and all pleadings, exhibits and deposition and hearing transcripts filed or created in that action, except documents that were filed under seal or designated as Confidential or Highly Confidential by third parties under the applicable protective order. Microsoft will cooperate with plaintiffs in any application to the District Court of the District of Utah in seeking to obtain access for plaintiffs to documents filed under seal or designated by third parties as Confidential or Highly Confidential. Microsoft will not assert objections to subpoenas of third parties for documents produced in Caldera;

(c) produced by Microsoft in Microsoft I, including pleadings, exhibits and deposition and hearing transcripts from that case to the extent such documents are not within the documents produced pursuant to Paragraphs 19(a) and 19(b) of this Order, except documents that were filed under seal and/or designated as Confidential or Highly Confidential by third parties under the applicable protective order. Microsoft will cooperate

with plaintiffs in any application to the District Court of the District of Columbia in seeking to obtain access for plaintiffs to such documents.

20. On or before July 31, 2000, provided that the Court has entered a protective order, Microsoft shall produce to Plaintiffs' Lead Counsel exemplars of all contracts and licenses created or used after January 1, 1990 between Microsoft and the top twenty OEMs in the United States, and exemplars of licenses to end users created or used after January 1, 1990, for Microsoft DOS, Windows 3.x series and Windows 9x series (including, but not limited to, Windows 95 and Windows 98) operating system software, and Excel, Word and Office suites software. To the extent that such contracts or licenses were produced by Microsoft in Microsoft I, Microsoft II and Caldera and filed under seal or designated as Confidential or Highly Confidential, Microsoft shall produce to plaintiffs copies of such documents within 14 days after June 16, 2000 and entry of a protective order in this action. Nothing in this Paragraph shall limit the right of plaintiffs to later request any documents that are not being produced pursuant to this Paragraph, or the right of Microsoft to object to any such requests.

21. Microsoft is not required by this Order to produce source code for its software. Plaintiffs are not precluded from seeking production of documents containing source code in subsequent document requests, and Microsoft may object to any request for such documents.

22. All documents produced by Microsoft pursuant to Paragraphs 19 and 20, above, that were created by Microsoft or its employees shall be deemed authenticated for all purposes in all actions transferred to this Court, both while such actions are pending before this Court and after remand, if any, to transferor courts.

23. All documents produced in this action shall be made available to counsel in any action that has not been transferred to this Court, but which arises out of the same facts and circumstances alleged in cases consolidated in this MDL 1332 proceeding, ("non-transferred actions") provided that: (a) counsel in such non-transferred action has executed the confidentiality undertaking attached as Exhibit A to the protective order entered in this action; (b) a protective order no less restrictive than that entered in this case has been entered in the non-transferred action; (c) counsel for Microsoft shall receive notice as provided by the protective order herein seven days prior to the time that counsel in the non-transferred action obtains access to such documents; and (d) counsel in such non-transferred action agrees to the procedures set forth in Paragraphs 24 and 25 of this Order.

24. A moratorium shall be placed on all other discovery until October 31, 2000, except: (a) there shall be no moratorium on discovery of documents and things pursuant to Fed. R. Civ. P. 34; (b) there shall be no moratorium concerning discovery directed to third parties pursuant to Fed. R. Civ. P. 45; (c) depositions of individuals in very ill health may be taken prior to October 31, 2000; (d) depositions concerning issues raised by motions to dismiss or for summary judgment may be taken prior to October 31, 2000; (e) there shall be no moratorium on document requests and production referring or relating to the software application markets identified in the Consolidated Complaint; and (f) other discovery may be conducted prior to October 31, 2000 by plaintiffs to the extent it is reciprocal of discovery taken by defendants, including discovery with respect to class certification issues.

25. All depositions noticed in this MDL 1332 proceeding shall be cross-noticed in any non-transferred action in which plaintiffs' counsel have been provided access to documents pursuant to Paragraph 23 of this Order. After October 31, 2000, all depositions noticed in any non-transferred action shall be noticed in this MDL 1332 proceeding. All depositions taken in this MDL 1332 proceeding that have been cross-noticed in other actions pursuant to this paragraph shall be deemed to have been taken in such other actions. All depositions taken in non-transferred actions that have been cross-noticed in this MDL 1332 proceeding as provided in this paragraph shall be deemed to have been taken in this MDL 1332 proceeding.

26. Microsoft shall provide Plaintiffs' Lead Counsel on or before July 31, 2000 with a list of civil investigative demands propounded to Microsoft by the United States between 1994 and 1998. Discovery concerning civil investigative demands and documents or information provided in response to such demands shall otherwise be subject to the Federal Rules of Civil Procedure.

MISCELLANEOUS

27. Service of pleadings and other documents by defendants need be made only upon both plaintiffs' Co-Chairs.

28. Service of pleadings and other documents by plaintiffs shall be made upon counsel designated by defendants.

29. All plaintiffs' counsel shall keep contemporaneous records of their time devoted to this litigation. Those records shall reflect the date of legal service rendered, the nature of the service, and the number of hours consumed. During the pendency of the

litigation, the record of each plaintiffs' counsel shall be submitted on a quarterly basis to the Executive Committee member designated by plaintiffs' Co-Chairs. Such records will be deemed work product.

IT IS SO ORDERED.

Dated: _____

June 26, 2000

J. Frederick Motz
United States District Judge

B

Order

Entered: August 8, 2000

00-21

Administrative Order 2000-5

In Re Microsoft Antitrust
Litigation

Michigan Supreme Court
Lansing, Michigan

Elizabeth A. Weaver,
Chief Justice

Michael F. Cavanagh
Marilyn Kelly
Clifford W. Taylor
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

On order of the Court, it appearing that a number of actions have been filed alleging violation of the Michigan Antitrust Reform Act (hereafter "MARA") by Microsoft Corporation, and that coordination of pretrial and trial proceedings in those cases will promote the economical and expeditious resolution of that litigation, pursuant to Const 1963, art 6, sec 4, we direct all state courts to follow the procedures set forth in this administrative order.

1. This order applies to all pending and future Microsoft MARA actions pending or to be filed in Michigan courts other than the Third Judicial Circuit, including any Microsoft MARA cases remanded by a federal court to a Michigan court other than the Third Judicial Circuit. For purposes of this order, "Microsoft MARA actions" include all cases in which it is alleged that a party has suffered harm due to violations of MARA by Microsoft Corporation.

2. Any orders in place in Michigan courts staying proceedings in a Microsoft MARA action as a result of Administrative Order 2000-2 may now be rescinded. Administrative Order 2000-2 is RESCINDED.

3. Each court in which a Microsoft MARA action is pending shall enter an order changing venue of the action to the Third Judicial Circuit within 14 days of the date of this order. Upon the filing of a new Microsoft MARA action, the court shall enter an order changing venue to the Third Judicial Circuit within 14 days after the action is filed. The court shall send a copy of the order to the State Court Administrator. A party who objects to the transfer of an action under this paragraph may raise the objection by filing a motion in the Third Judicial Circuit. Such a motion must be filed within 14 days after the transfer of the action. Nothing in this order shall be construed as a finding that venue is proper in Wayne County.

4. Until the transfer of an action under paragraph 3, the parties to the action shall include the words "Microsoft MARA case" on the top right-hand corner of the first page of any papers subsequently filed in this action.

5. The Third Judicial Circuit shall cooperate with the State Court Administrator in monitoring the proceedings in the actions.

6. MCR 2.222 and MCR 2.223 do not apply to changes of venue pursuant to this order.

e0808



I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

August 8 . 200 0 Corbin R. Davis

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 85,076-S

BRYCE BELLINDER, INDIVIDUALLY, AND AS REPRESENTATIVE OF ALL PERSONS/INDIRECT PURCHASERS SIMILARLY SITUATED

v.

**MICROSOFT CORPORATION,
Johnson County District Court No. 99-C-17089**

BARBARA MACK, INDIVIDUALLY, AND ON BEHALF OF OTHERS SIMILARLY SITUATED,

v.

**MICROSOFT CORPORATION,
Sedgwick County District Court No. 00-C-0855**

JAY CLIFFORD FOSTER, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

v.

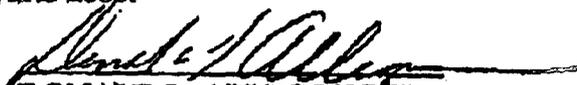
**MICROSOFT CORPORATION AND JOHN DOES 1 THROUGH 20, INCLUSIVE,
Wyandotte County District Court No. 00-C-00092**

ORDER

This matter is before the Court pursuant to a motion to consolidate multidistrict litigation pursuant to K.S.A. 60-242(c). The parties' responses to the motion are noted. The above captioned actions arise out of the same transaction or occurrence or series of transactions or occurrences, and transfer and consolidation will promote the just and efficient conduct of the actions.

Sedgwick County District Court Case No. 00-C-0855 and Wyandotte County District Court No. 00-C-00092 are hereby transferred to Johnson County District Court and consolidated with Johnson County District Court Case No. 99-C-17089. The above captioned cases are consolidated for purposes of discovery, pretrial proceedings and possible trial. The consolidated cases are hereby assigned to Judge Lawrence E. Sheppard.

By order of the Court this 13th day of June 2000.


**DONALD L. ALLEGRUCCI
JUSTICE**

WMAESII A TRUE COPY
Kathleen J. Gibson
Clerk of the Supreme Court
of the State of New Mexico

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

June 5, 2000

NO. 26,267

MICROSOFT CORPORATION ANTITRUST
LITIGATION,

Petitioners,

vs.

WILLIAM F. LANG, Judge, Second Judicial
District Court, ART ENCINIAS, Judge,
First Judicial District Court, and
DANIEL A. SANCHEZ, Judge, First Judicial
District Court,

Respondents,

and

JAMES EDWARDS, ELIZABETH G. MARTIN, et al.,
and LUCERO, et al.,

Real Parties in Interest.

ORDER

WHEREAS, this matter came on for consideration by the
Court upon joint amended petition for writ of superintending
control and response thereto, and the Court having considered
said pleadings and being sufficiently advised, Justice Joseph
F. Baca, Justice Gene E. Franchini, and Justice Patricio M.
Serna concurring;

NOW, THEREFORE, IT IS ORDERED that the petition hereby is
GRANTED and a writ of superintending control shall issue.

IT IS SO ORDERED.

WITNESS, The Hon. Pamela B. Minzner, Chief
Justice of the Supreme Court of the State of
New Mexico, and the seal of said Court this
5th day of June, 2000.

(S E A L)

Kathleen J. Gibson
Kathleen Jo Gibson, Chief Clerk of the Supreme
Court of the State of New Mexico

WESTERN TRUE COPY

William F. Lang
Clerk of the Supreme Court
of the State of New Mexico.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

October 13, 1999

NO. 26,267

MICROSOFT CORPORATION AND TRUST
LITIGATION,

Petitioners,

vs.

WILLIAM F. LANG, Judge, Second Judicial
District Court, ART ENCINIAS, Judge,
First Judicial District Court, and
DANIEL A. SANCHEZ, Judge, First Judicial
District Court,

Respondents,

and

JAMES EDWARDS, ELIZABETH G. MARTIN, et al.,
and LUCERO, et al.,

Real Parties in Interest

WRIT OF SUPERINTENDING CONTROL

THE STATE OF NEW

TO: Hon. William F. Lang
Hon. Art Encinias
Hon. Stephen Pfeffer
Hon. Daniel A. Sanchez

GREETINGS:

WHEREAS, a verified joint petition for writ of
superintending control having been filed in this matter by Fran
Lucero, et al., and the Court being sufficiently informed, and
good cause appearing for the issuance of a writ of

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

superintending control;

NOW, THEREFORE, IT IS ORDERED that respondents hereby are directed to consolidate the following three class action cases in the First Judicial District wherein Hon. Daniel Sanchez shall preside:

Edwards v. Microsoft Corp., NO. 117-CV-9902856
Martin v. Microsoft Corp., NO. CV-200000449
Lucero v. Microsoft Corp., NO. CV 02252

Service of this writ shall be made on respondents and the real parties in interest in the manner prescribed by the Rules of Appellate Procedure.

WITNESS, The Honorable Pamela B. Minzner,
Chief Justice of the Supreme Court of the
State of New Mexico, and the seal of this
Court this 5th day of June, 2000.

(S E A L)

Kathleen Jo Gibson
Kathleen Jo Gibson, Chief Clerk of the
Supreme Court of the Stat New Mexico

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
DEPARTMENT 304

**ENDORSED
FILED**
San Francisco County Superior Court
FEB 8 2000
ALAN CARLSON, Clerk
BY: GARL J. SAYERS
Deputy Clerk

COORDINATION PROCEEDING
SPECIAL TITLE [RULE 1550(b)]

MICROSOFT V CASES

Judicial Counsel Coordination
Proceeding No.: 4112

**ORDER GRANTING PETITION FOR
COORDINATION**

Good cause appearing that the coordination of the included actions is appropriate under the standards specified in Code of Civil Procedure Section 404.1, it is ordered that the petition for the coordination of the included actions is granted. Further, Judicial Counsel Coordination Proceedings 4106, 4107, 4109, 4110 and 4112 are consolidated and shall proceed under JCC4106. The Court of Appeal, First Appellate District, is designated the reviewing court having appellate jurisdiction and the court in which any petition for writ relating to any subsequent order in this proceeding shall be filed. It is recommended that the Coordinated Actions be assigned to the County of San Francisco.

DATED: February 7, 2000



STUART R. POLLAK
Judge of the Superior Court

Included Actions:

Superior Court of California, City and County of San Francisco	307970	Montgomery Partners, Inc. v Microsoft corp.
Superior Court of California, City and County of San Francisco	301357	Lingo v Microsoft Corp.
Superior Court of California, City and County of San Francisco	308015	Saams v Microsoft Corp.
Superior Court of California, City and County of San Francisco	308067	Lea v. Microsoft Corp.
Superior Court of California, City and County of San Francisco	308083	Piculell v Microsoft
Superior Court of California, City and County of San Francisco	308120	Fisher v Microsoft
Superior Court of California, City and County of San Francisco	308288	Darby v. Microsoft Corp.
Superior Court of California, City and County of San Francisco	308366	Podell v. Microsoft Corp.
Superior Court of California, City and County of San Francisco	308390	Williams v. Microsoft Corp.

Superior Court of California, City and County of San Francisco	308797	Davis Instruments Corp. v. Microsoft Corp.
Superior Court of California, City and County of San Francisco	308976	Haynes v. Microsoft Corp.
Superior Court of California, City and County of San Francisco	309232	GCA Strategies, Inc. v. Microsoft Corp.
Superior Court of California, City and County of San Francisco	309235	Lang v. Microsoft Corp.
Superior Court of California, County of San Diego	GIC 738730	Wood v. Microsoft Corp.
Superior Court of California, County of San Diego	GIC 739153	Mission Gorge Computer Outlet v. Microsoft Corp.
Superior Court of California, County of San Diego	GIC 739158	Tazbaz v. Microsoft Corp.
Superior Court of California, County of San Diego	GIC 739082	Bliss v. Microsoft Corp.
Superior Court of California, County of San Diego	GIC 739337	Bushin v. Microsoft Corp.
Superior Court of California, County of San Diego	GIC 740413	Kelley v. Microsoft Corp.

Superior Court of California, County of Orange	817089	Wilson v. Microsoft Corp.
Superior Court of California, County of Los Angeles	BC 220860	Lara v. Microsoft Corp.
Superior Court of California, County of Yolo	CV991740	Crain v. Microsoft Corp.
Superior Court of California, County of Marin	CV996383	AO/NET Universal, Inc. v. Microsoft Corp.